IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/02/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 14735 OF 1991

T. Govindaraju Naidu .. Petitioner

-Vs-

The Special Deputy Collector (LA)
Tamil Nadu Housing Board Schemes
Shopping Complex, Thirumangalam
Chennai 600 040. .. Respondent

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Mandamus as stated therein.

For Petitioner : Mr. David Thiyagaraj

For Respondent : Ms. D.Malarvizhi, GA

:ORDER

1. The petitioner prays for the issue of a writ of mandamus directing the respondent to pass an order of enhanced compensation under Section 28-A of The Land Acquisition Act, 1894, relating to his lands comprised in Survey No.201/2 measuring 50 cents in No.106, Koyambedu Village on the representations dated 29.5.89 and 29.12.90.

2. Heard Mr.David Thiyagaraj, learned counsel appearing for the petitioner and Ms.D.Malarvizhi, learned Government Advocate appearing for the respondent. With the consent of counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner's land comprised in survey No.201/2 measuring 50 cents in Koyambedu Village was acquired by the respondent for housing scheme and an award was passed under Section 11 of The Land Acquisition Act in Award No.1/80 dated 30.1.1980. A sum of Rs.5,692.50 alone was awarded as compensation. The petitioner had not sought for a reference under Section 18 of The Land Acquisition Act claiming enhanced compensation. According to the petitioner, in respect of lands acquired by the very same notification located in the same locality and which was also the subject matter of award 1/90 dated 30.1.80, the neighbouring owners sought for reference and the civil court enhanced the compensation from Rs.99/= per cent to Rs.500/= per cent in Koyambedu village. Placing reliance on Section 28-A of The Land Acquisition Act, the petitioner

moved the respondent while enclosing a copy of the judgment and decree in LAOP No.63/86 on the file of the Ist Assistant Judge, City Civil Court, which arose on a reference in respect of Award No.1/80 dated 30.1.80. The civil court answered the reference and pronounced the judgment on 22.3.88 in the said LAOP 63/86. The petitioner applied for copy of the said judgment and award on 28.4.1988 . A certified copy of the decree was obtained on 24.4.89. Within the period of three months, the petitioner preferred an application before the respondent under Section 28-A, while enclosing copy of the judgment and decree with his covering letter dated 29.5.89.

4. The said letter was returned unserved. On 2.6.89 the petitioner, through his counsel reiterated and demanded the said claim. The respondent received the same and fixed the date of enquiry on 21.6.89. The petitioner's counsel appeared for the enquiry, which was adjourned, but there was no further enquiry. The petitioner sent a notice on 25.9.90 calling upon the respondent to redetermine the compensation under Section 28-A based upon the award in LAOP No.63/86. As there was no response after making the demand, the petitioner has come forward with the present writ petition seeking for the issue of a mandamus.

5. The respondent filed a counter. The respondent admitted the acquisition of survey No.201/2 belonging to the petitioner. The respondent also admitted having passed an award No.1/80 dated 30.1.80 and award of compensation of Rs.5,692.50. It is also admitted that the petitioner has not sought for reference under Section 18 of The Land Acquisition Act. But in respect of l;and covered by the same award No.1/8 0, other land owners sought for a reference under Section 18 before the Civil Court. The Civil Court admittedly enhanced the market value from Rs.99/= to Rs.500/= per cent in respect of the same lands. It is stated that the first respondent preferred an appeal as against the award in LAOP No.63/86 before this Court with a petition to condone the delay and the appeal A.S. No.225/92 was disposed of on 6.4.92.

6. It is admitted that the petitioner presented his application under Section 28-A through his counsel on 29.5.89. It is also admitted that the petitioner presented the certified copy of the judgment and decree passed in LAOP No.63/86 dated 22.3.88. While acknowledging the representation seeking for redetermination under Section 28-A, the respondent sent a notice dated 13.6.89 intimating the petitioner that an enquiry will be conducted on 21.6.89 at 11.00 a.m. The petitioner was required to appear before the respondent. The petitioner also attended the enquiry. The respondent has sent a reply to the petitioner on 16.11.90 intimating that already appeal has been preferred against the award in LAOP No.63/86 and after the disposal of the said appeal, the petitioner may be advised to prefer his claim under Section 28-A of the Act. A.S. No.225/92 preferred against the award in LAOP No.63/86 was disposed on 6.4.92.

7. It is contended that the petitioner should have preferred his claim within three months from the date of judgment of the High Court, but he has failed to make such a representation within the time prescribed. The request of the petitioner made on 25.9.89 was earlier to the judgment in the first appeal and after disposal of the appeal, the petitioner has not made a demand under

Section 28-A (1). Hence, the earlier application is not maintainable and the petitioner is not entitled to seek for a mandamus nor the respondent could be compelled to redetermine the compensation payable in respect of the petitioner's lands under Section 28-A as the claim is belated and beyond the time prescribed in Section 28-A.

8. The only point that arises for consideration in this writ petition is :-
"Whether the petitioner is entitled to a writ of mandamus as prayed for on the admitted facts ?"

9. There is no dispute about the acquisition of the petitioner's lands and the award of compensation. Equally there is no dispute that in respect of the lands in the locality, which is covered by the same award, a reference was made under Section 18 and the Civil Court enhanced the compensation from Rs.99/= to Rs.500/= per cent. It is also not in dispute that the petitioner secured a copy of the decree passed in LAOP No.63/88 on 24.4.89 and submitted the same along with his representation dated 29.5.89. The respondent by reply dated 13.6.89 called upon the petitioner to appear for an enquiry under Section 28-A. The petitioner has appeared through his counsel. Though the respondent pleaded that it has sent a reply stating that the petitioner has to await the judgment of the first appeal and has to renew his application under Section 28-A, no such material has been placed before the Court by the respondent except taking such a stand in para-5 of the counter affidavit. The respondent after the enquiry under Section 2 8-A has sent a claim that it has sent a reply to the petitioner, which is being disputed. However, the respondent produced a copy of the reply dated 16.11.90, which reads thus :-
"Sir,
Sub : Land in S.No.201/2-measuring 0.50 cents - 106, Koyambedu Village.
Ref : Your letter dated Nil.
I am to inform you that necessary appeal has been filed against the LAOP.63/86

in this office Rc.1494/A3/dated 28.6.90. After disposal of the said appeal the petitioner may be instructed to prefer his claim under Section 28-A (1) of Land Acquisition Act."

10. Accepting the above statement to be correct, even then the petitioner, who has already submitted his claim under Section 28-A need not submit his claim once again after the disposal of the appeal preferred by the respondent. Neither such is the scope of Section 28-A nor the Section contemplates such a course. When once a claim is made under Section 28-A, based upon the determination of compensation by the Civil Court, the respondent has to redetermine the compensation payable in respect of the compensation awarded for the acquisition of the petitioner's land. Section 28-A, which is the material provision, reads thus :-
"28-A. Re-determination of the amount of compensation on the basis of the award of the Court - (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written

application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under this subsection, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.
(2) The Collector shall, on receipt of an application under subsection 91), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.
(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

11. In this case an application was filed within time and in terms of sub-section (2) of Section 28-A, an enquiry was conducted, but no redetermination has been done nor an award was passed. There is no doubt that the petitioner has complied with the requirements of Section 28-A and an application has been filed within the period prescribed under Section 28-A (1). Yet, without redetermining, even according to the respondent, the respondent had merely intimated that appeal is pending. The mere fact that appeal is pending is not a valid ground to delay; yet the respondent has not redetermined. The appeal also has been dismissed by this Court. Even thereafter also the respondent has not chosen to redetermine the compensation in terms of Section 28 -A. The extra-ordinary stand taken by the respondent that the petitioner should have applied once again under Section 28-A after the disposal of the first appeal by this Court is a misconception and misreading of Section 28-A and cannot be sustained. Section 28-A (1) refers to the Court, namely, the Court as defined under Section 3 (d), which enhanced the compensation in excess of the amount awarded by the Collector under Section 11. In every respect the petitioner has satisfied the requirements prescribed under Section 28-A (1) and there is no dispute in this respect.

12. When the respondent has conducted an enquiry under Section 28-A (1), it is obligatory on the part of the the respondent to have redetermined the compensation payable in respect of the petitioner's land, but the respondent has merely postponed the same on a wrong premise. Having failed to discharge the statutory functions in terms of Section 28-A, the respondent cannot now contend that the petitioner should have preferred a claim after the disposal of the appeal. This is not in accordance with Section 28-A and such a contention cannot be sustained.

13. Section 28-A is intended and meant for inarticulate and poor people who have failed to take advantage of the right of reference by a civil court under Section 18. Section 28-A is a provision by which the owners of the land could seek to reopen an award, which has become final. To avail the benefit of redetermination of the compensation the conditions laid down under Section

28-A have to be fulfilled and such demand should have been made within three months from the date of the award. In this case, there is no dispute that the petitioner had taken all the steps as prescribed by Section 28-A and within three months he has applied for redetermination.

14. The learned counsel for the petitioner relied upon the pronouncement of the Supreme Court in JOSE ANTONIO CRUZ DOS R. RODRIGUESES VS. LAND ACQUISITION COLLECTOR reported in 1996 (1) SCC 88. In the said pronouncement, the Supreme Court, while construing Section 28-A held that application should be made withi n three months from the date of the award of the court for redetermination.

15. In TOTA RAM VS. STATE OF U.P. reported in 1997 (6) SCC 280, while construing Section 28-A, the Apex Court held that the Court means the Court of original jurisdiction to whom reference under Section 18 would lie and Section 28-A gives right to the person to obtain certified copy of the award and decree and the court means the court of civil jurisdiction to which reference under Section 18 has been made or would lie.

16. In BHAGTI VS. STATE OF HARYANA reported in 1997 (4) SCC 473, the Apex Court held that Section 28 does not apply to an order made by the High Court and the claimant could seek redetermination of compensation on the basis of the award of the reference court and not the judgment of the High Court. In that context, the Apex Court held thus :-
"6. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred with the right to apply for redetermination under Section 28-A(1). But all those who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the Reference Court are not entitled to avail of the remedy under Section 28-A. Equally, the right and remedy of redetermination would be available only when the Reference Court under Section 18 has enhanced the compensation in an award and decree under Section 26. Within three months from the date of the Reference Court excluding the time taken under the proviso, the applicant whose land was acquired under the same notification but who failed to avail of the remedy under Section 18, would be entitled to avail of the right and remedy under Section 28-A. The order and judgment of the High Court does not give such right. Thus, this Court held that Section 28-A does not apply to an order made by the High Court for redetermination of the compensation. Thus, we hold that the question of reference to the Constitution Bench does not arise. The claimants are not entitled to make an application for redetermination of compensation under Section 28-A(1) after the judgment of the High Court; nor are the claimants entitled to avail of that award which is more beneficial to the claimants, i.e., the High Court judgment."

17. The pronouncement in JOSE ANTONIO CRUZ DOS R. RODRIGUESES VS. LAND ACQUISITION COLLECTOR reported in 1996 (1) SCC 88 was referred to a larger Bench. The larger Bench in JOSE ANTONIO CRUZ DOS R. RODRIGUESES VS. LAND ACQUISITION COLLECTOR reported in 1996 (6) SCC 746 held that there is no difference of opinion on the question that the period of limitation would start to run from the date of reference Court's award on the basis whereof a

determination is sought and the Full Bench held that the period of limitation to be reckoned from the date of the award by the Court disposing of the reference under Section 1 8 and not the appellate court dealing with the appeal against the award of the reference Court.

18. Following the above pronouncement, this Court holds that within the period prescribed by Section 28-A, the petitioner had validly applied for redetermination of compensation in terms of the award passed by the Court to which a reference was made under Section 18. in respect of identical land covered by the same award Therefore, when the petitioner has complied with all the requirements of Section 28-A, it is incumbent on the part of the respondent to redetermine the compensation based upon the award of the Court, which answered the reference under Section 18. The view of the respondent that the petitioner has to wait for the judgment in the first appeal or that the petitioner has not applied once again after the disposal of the appeal by the High Court cannot be sustained. It is clear that the respondent has failed to discharge the statutory duty of redetermining the compensation under Section 28-A and, hence, the petitioner has rightly approached this Court. The respondent has failed to redetermine the compensation when a demand has been made strictly in accordance with Section 28-A. The petitioner is well founded in approaching this Court and seeking the relief of mandamus.

19. In the foregoing circumstances, this writ petition is allowed. A mandamus is issued to the respondent to redetermine the compensation in terms of Section 28-A and pass an award within four months from the date of communication of this order. The parties shall bear their respective costs.

Index : Yes
Internet : Yes
GLN

To

The Special Deputy Collector (LA)
Tamil Nadu Housing Board Schemes
Shopping Complex, Thirumangalam
Chennai 600 040.